IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 12939 of 2004

Between:

1 Potta Bharathi, W/o. P.S.A. Narasimha Murthy,
R/o. H.No. 22-74-61, Visakhapatnam.
2 P.S.A. Narasimha Murthy, S/o. Veerabadra Swamy,
R/o. H.No. 22-74-61, Visakhapatnam.

... PETITIONERS

AND

1 M/s. State of Bank of India, Parvathipuram Branch,
Parvathipuram, Vizianagaram District.
2 The Recovery Officer, Debts Recovery Tribunal, 3rd Floor,
Isnar Khazana Towers, Dwaraknagar, Visakhapatnam.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or orders more so a writ in the nature of Mandamus by declaring the auction conducted by the 2nd respondent on 7-7-2004 for sale of Veerabhadra Picture Palace, Parvathipuram as arbitrary, illegal, unlawful, unjust, inequitable and opposed to the principles of natural justice and set aside the same.

Counsel for the Petitioner: MR.G.VASANTHA RAYUDU

Counsel for the Respondent: MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

ORAL ORDER :

(Per Hon'ble The Chief Justice)

...

1. On 27.08.2003 we had disposed of Writ Petition No.14455 of 2003 thereby suspending proclamation of sale issued by the Recovery Officer for sale of cinema theatre, in R.P.No.231 of 2002 in O.A.No.1741 of 1999 on the file of the Debts Recovery Tribunal at Visakhapatnam, till 15.11.2003. We have also directed that it is permissible for the petitioners during the said period to sell 8 shop rooms adjacent to cinema theatre or any part thereof so as to enable them to raise sufficient funds to pay-off the amount due and payable to the bank. The sale proceeds so realised were directed to be paid first to liquidate the amount payable to the first respondent. We also made it clear that in case the amount is not paid or any amount remains in balance, it would be permissible for the bank to take recovery proceedings against the petitioners in accordance with law.

2. Admittedly petitioners have not cleared their dues payable to the first respondent. Only a paltry sum of Rs.3,00,000/- is stated to have been paid. Having failed to clear the decretal amount, there was no option left with the first respondent bank to continue to pursue their execution petition pursuant to which the property is stated to have been put to auction on 07.07.2004. Now the petitioners approached this court praying to declare the auction conducted as illegal since no notice was served upon the petitioners and that the petitioners be permitted to pay the decretal amount. It is stated that confirmation of sale proceedings are still pending.

3. Considering the facts and circumstances, we do not consider it to be a fit case to stay confirmation proceedings for the auction stated to have been taken place on 07.07.2004. But, however, we make it clear that in case the petitioners would pay off the entire decretal amount due and payable to the

satisfaction of the first respondent before the date of confirmation of sale, obviously the Recovery Officer will act in accordance with law by not confirming the sale.

4. Accordingly writ petition is dismissed. No costs.

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DEVINDER GUPTA. C.J.,

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C.V. RAMULU. J.,

Dated: 05.08.2004.

DRK**.**

To

1. M/s. State of Bank of India, Parvathipuram Branch,

Parvathipuram, Vizianagaram District.

2 The Recovery Officer, Debts Recovery Tribunal, 3rd Floor, Isnar Khazana Towers,Dwaraknagar, Visakhapatnam.

3. Two CD copies.